IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5576 OF 2006

Shri.Appasaheb Govindrao Tathe ... Petitioner (Orig.Plff.)

V/s.

Shri.Jayawant Appasaheb Tathe ... Respondent. (Orig.Deft.)

Shri.G.S.Godbole for the petitioner.
Shri.G.M.Savagave for the respondent.

CORAM : A.P.DESHPANDE, J.
DATED : 13th November, 2006.

P.C.

1. Rule . Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner is the father whereas the respondent is a son. The petitioner apprehending interference in the possession of the suit property instituted a suit for declaration and permanent injunction. The petitioner claims the property under a Will purported to be executed by his father, whereas the respondent claims a share in the property by natural succession. During the pendency of the suit, the petitioner had filed an application for temporary injunction with a view to restrain the respondent from interfering in the suit properties. The order passed by the Trial Court and the First Appellate Court in Miscellaneous Appeal was

carried to the High Court by filing Writ Petition No.5498 of 2003. This Court by an order dated 10/12/2003 directed the parties to maintain the status quo as the question of possession was not adjudicated. I am informed by both the learned counsel appearing for respective parties that the order of status quo granted by this Hon'ble Court on 10/12/2003 continue to hold the field until the impugned order came to be passed by the First Appellate Court. The Trial Court decreed the suit.

3. A regular first appeal has been filed by the defendant-respondent before the District Judge and therein an application under Order 41 Rule 5 came to be filed. The First Appellate Court has stayed the decree for perpetual injunction in respect of the suit property 'A' so also stayed the direction in respect of payment of amount of sugarcane crop deposited in the Trial Court, till final disposal of the appeal.

4. The learned counsel for the petitioner pointed out that the Trial Court has recorded a finding in favour of the petitioner being in possession of property 'A'. The said finding is recorded in Para 30 of the judgement of the Trial Court. He further submits that as the issue of possession was pending consideration of the Trial Court, an order of status quo was in operation. He submits that after passing of the decree by the Trial Court by recording the finding that the petitioner is in possession of the suit property 'A', no adverse order could have been passed by the First Appellate Court against the petitioner and the maximum that could have been granted was an

order of status quo. It is crystal celar that the petitioner could not have been placed in a more disadvantageous situation after the Trial Court recorded a finding in favour of the petitioner in regard to the possession and for protecting the interest of the respondent No.1. During the pendency of the appeal, the First Appellate Court ought to have continue the position that prevailed prior to passing of the decree and the order of status quo operating under order passed by this Court on 10/12/2003, could only be continued.

5. Touching the other aspect of the interim order which goes to deny the amount of sugarcane crop deposited in the Trial Court to the petitioner, it is contended by the learned counsel for the petitioner that as the petitioner has succeeded in the Trial Court, the First Appellate Court could have permitted the said amount to be withdrawn by the petitioner and no purpose would be served by keeping the amount with the Court. The amount lying in the Court is proceeds of sugarcane crop received during the pendency of the suit. I do no find any reason to keep the amount lying in the Court whereas the amount of sugarcane crop deposited in the Court need to be released in favour of the petitioner. The payment can be secured by directing furnishing of security. For the reasons stated hereinabove, this Writ Petition needs to be partly allowed.

6. Hence, I pass the following order : -

Para 1 and 2 of the operative order passed by the First Appellate Court dated 17/04/2006 is quashed and set aside and the

following be read at its place.

Application at Exh.7 filed in R.C.A.No.21 of 2006 is partly allowed. Parties are directed to maintain status quo in regard to property 'A' as was directed by order dated 10/12/2003 by the High Court in Writ Petition No.5498 of 2003.

The amount of sugarcane crop deposited in the Trial Court is permitted to be withdrawn by the original plaintiff subject to the plaintiff's furnishing surety to the extent of the amount to be withdrawn by him.

7. With above modification in the order passed by the First Appellate Court, this Writ Petition is disposed off.

8. Having regard to the peculiar facts of this case, I hope and trust that the First Appellate Court would proceed expeditiously to decide the regular civil appeal. I expect decision in the appeal within a period of six months from today.

(A.P.DESHPANDE, J.)